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Treaty of Ghent

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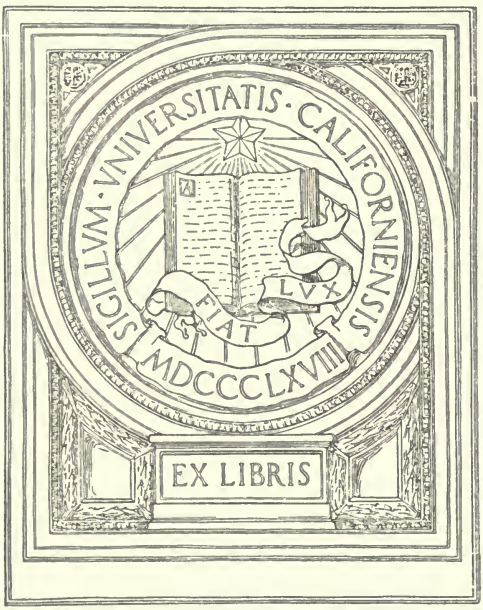
GIFT OF
Prof.
Charles A. Kofoid



THE

TREATY OF GHENT,

AND THE

FISHERIES;

OR THE

DIPLOMATIC TALENTS

OF

JOHN QUINCY ADAMS,

CANDIDLY EXAMINED.

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GIFT OF
CHARLES A KOFOID

TREATY OF GHENT, &C.

WHO has not heard of the triumphant result of the negotiations at Ghent? Who does not know that the glory of the triumph is claimed by John Quincy Adams? He is the intellectual giant who prostrated with ease the sophistry, and the arguments; the arts, schemes and stratagems of a superannuated Admiral and two mere diplomatic machines.

It may be questioned whether a resistance to the British claim for making the Penobscot an eastern boundary, surrendering Louisiana, an absolute exclusion from the lakes, and precluding ourselves from the exercise of all authority or influence over the Indians within our own limits, can be considered as absolute evidence of superior diplomatic skill and intellectual power. Great Britain never expected from us an acquiescence in such monstrous demands, and one would think that an *ordinary* mind might have commanded sufficient arguments to refute such pretensions when urged on the ground of right.

Did the Commissioners of America succeed in securing a treaty stipulation, respecting the imprisonment of seamen, and the belligerent right to blockade, which, together with the celebrated orders in council, were the only alleged causes of the war? None will pretend that they did:—then it would seem that the whole skill of the Commissioners was exerted to save that which was unquestionably ours before the commence-

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ment of hostilities, and not to obtain reparation for violated rights and a permanent security for their future inviolability.

Such is the foundation of that mighty reputation which has been reared up for the wise men of Ghent.

The whole commission saved the Territory of the United States, excepting Moose Island, an integral part of old Massachusetts!

They saved to us a right of going to the British East Indies with solid specie, and returning with Indian cottons, to compete with ours, and Indian silks to clothe our yeomanry.

Whether the labour of preservation was divided or not, I do not know: but Mr. Adams claims the exclusive merit of SAVING the FISHERIES.

For this, his admirers claim for him a reputation equal to that of Sully, or Richelieu, or the Duke of Marlborough.

We are informed in Mr. Adams' pamphlet containing his remarks upon the private letter and duplicate of Mr. Russell, that immediately after the meeting of the Commissioners at Ghent, the British Commissioners notified the American delegation "that the British Government did not intend to grant to the United States gratuitously, the privileges formerly granted by Treaty to them, of fishing within the limits of the British sovereignty, and of using the shores of the British territories, for the purposes connected with the fishery." Shortly after he says, "the only way in which it was possible to meet the notification of the British plenipotentiaries, without surrendering the rights which it jeopardized, was by denying the principle upon which it was founded. This was done, by asserting the principle, that the Treaty of Independence of 1783, was of that class of treaties, and the right in question of that character, which are not abrogated by a subsequent war; that the notification of the intention of the British government, *not to renew the grant*, could not affect the right of the United States, which had not been forfeited by the war; and that considering

it as still in force, the United States needed no new grant from Great Britain to revive, or any new article to confirm it."

"It was not acceded to by the British plenipotentiaries. Each party adhered to its asserted principle; and the Treaty was concluded without settling the interest involved in it."

The principle, that the title to the fisheries was prior possession, and acknowledgment by the Treaty of 1783, and that Treaty, was not and could not from its intrinsic character be abrogated by a subsequent war, Mr. Adams says, "he willingly admits to have been assumed and advanced by the American Commissioners, at *his suggestion.*"

The proceedings of the British and American nations subsequent to the ratification of the Treaty of Ghent, will tend to elucidate more clearly, the subject of the Fisheries.

The provisions of that Treaty had scarcely become operative, before the enrolment and license of a fishing vessel from Cape Cod, was endorsed by Captain Lock, of the British navy, in the following words, "Warned off the coast by his Majesty's sloop Jaseur, not to come within sixty miles, N. Lock, Captain." This was done on the 19th of June, 1815. The American vessel returned home without completing her fare. Information of the circumstance was immediately communicated, by the collector of Barnstable, to the American government. Mr. Monroe, then Secretary of State, on the 18th of July, addressed a note to Mr. Baker, the British Charge d'Affaires, in which he complained of this act, and also of "the similar warning which had been given by the commander of the Jaseur, to all the other American vessels, which were then in sight."

Mr. Baker in his reply, denied the authority of the Captain of the Jaseur, to warn off American vessels, fishing at the distance of 60 miles from the British coasts, and stated explicitly, that the British government, had never authorized any interruption to American vessels, fishing on the *high* seas.

On the 21st of July, Mr. Monroe addressed a letter to Mr. Adams, who was then our Minister to the Court of Great Britain, complaining of the outrage of the Jaseur. "This (says the Secretary) it is presumed has been done under a construction of the late Treaty of Peace, *which by being silent on the subject*, left that important interest to rest on the ground, on which it was placed by the Treaty of 1783." (Thus assuming the doctrine of Mr. Adams.) He continues "the measure thus promptly taken by the British government, notwithstanding the declaration of our Ministers at Ghent, that our right would not be affected by the silence of the Treaty, *indicates a spirit which excites equal surprise and regret*: one which by no means corresponds with the amicable relations established between the two countries by that Treaty, or with the spirit, with which it has been executed by the United States." He further says, "*Every right appertaining to the fisheries which was secured by the Treaty of* 1783, *stands now as unshaken and perfect as it then did, constituting a vital part of our political existence, and resting on the same solid foundation, as our Independence itself.*" *He proceeds*, "*it can scarcely be presumed, that the British government, after the result of the late experiment, in the present state of Europe, and under its other engagements, can seriously contemplate a renewal of hostilities.*" He concludes with saying, that "*we ought to be prepared at every point to guard against such an event*," and exhorts Mr. Adams, to be attentive to circumstances, and to give timely notice of threatened danger.

On the 19th of September, Mr. Adams, in a letter to Mr. Monroe, after expressing an apprehension that a disposition existed, on the part of the British government, to renew hostilities, states the substance of a conversation with Lord Bathurst. Upon inquiry whether he had received from Mr. Baker, any communication respecting several subjects of complaint on the part of America, among which was the warning given by the Captain of the Jaseur, to the American fishing vessels, he answer-

ed, that a communication on the subject, had been already sent to Mr. Baker, and at the request of Mr. Adams, he stated to him its substance, "that as on the one hand, Great Britain could not permit the vessels of the United States to fish within the creeks, and close upon the shores of the British territories, so, on the other hand, it was by no means her intention to interrupt them, in fishing any where in the open sea, or without the territorial jurisdiction, a marine league from the shore. And, therefore, that the warning given at the place stated, in the case referred to, was altogether unauthorized."

Mr. Adams then urged upon the consideration of the British Minister, the existence of an absolute right, on the part of America, still to take fish in the British waters, and expressed an intention of addressing a letter to him on the subject.

Lord Bathurst, replied, that due attention should be given to the letter, but that Great Britain had *explicitly manifested her intention concerning this subject,* that it had excited much feeling, and that the British fishermen, considered it as an excessive hardship to be supplanted by the Americans upon their own shores.

Mr. Adams considered this feeling, as the sensibility of a partial, and individual interest, which mistook a right for a privilege. If an attention to that interest was to have weight in determining the policy of the British Cabinet, *there was another interest liable to be affected, which was also worthy of consideration; the manufacturing interest.* "The question of right had not been discussed at the negotiations at Ghent. The British plenipotentiaries, had given a notice that the British government, did not intend hereafter, to grant to the people of the United States, the right to fish, and to cure and dry fish, within the exclusive British jurisdiction in America, without an equivalent, as it had been granted, by the Treaty of 1783. The American plenipotentiaries had given notice, in return, that the American government, considered all the rights and liberties in and to the fisheries, on the coast of North

America, as sufficiently secured by the possession of them, which had always been enjoyed by them previous to the Revolution, and by the recognition of them, in the Treaty of Peace, in 1783." Mr. Adams, also contended, for the non-abrogation of the Treaty of Peace, in 1783, by the war of 1812, and the right of fishing as being co-equal to, and co-existent with the right to independence, and that it could not be surrendered, without a virtual surrender of independence, &c.

He then says, "There were also considerations of policy and expediency, to which I hoped, they would give suitable attention, before they should come to a final decision on this point. I thought it my duty to suggest them, that they might not be overlooked. The subject was viewed by my countrymen, as highly important, and I was anxious to omit no effort, which might, possibly, have an influence in promoting *friendly sentiments*, between the two nations, or in guarding against the excitement of others. *These fisheries afforded the means of subsistence, to multitudes of people, who were destitute of any other. They also afforded the means of remittance to Great Britain, in payment* FOR ARTICLES OF HER MANUFACTURES, EXPORTED TO AMERICA. *It was well understood to be the policy of Great Britain, that no unnecessary stimulus, should be given to the manufactures of the United States, which would diminish the importation from those of Great Britain. But by depriving the fishermen of the United States, of this source of subsistence, the result must be, to throw them back upon the country, and drive them to resort to manufacturing for themselves, while on the other hand, it would cut off the means of making remittances in payment for the manufactures of Great Britain.*"

Mr. Adams, also urged upon the British minister, considerations of humanity, such as the multiplication of the means of subsistence by the fisheries, and adverted to the indulgence granted to the Dutch, who were permitted even in a time of war, to fish upon the coasts of the island of Great Britain, and inferring from the

interdiction of fishing to the Americans, on the British American shores, "an indication of animosity, transcending even the ordinary course of hostility in war." Lord Bathurst, denied that any such disposition existed on the part of the British government.—That instructions had been issued to the officers on the American station, not even to interrupt the American fishermen, who might have proceeded to the coasts, within the British jurisdiction for that year, but to allow them to complete their fares, *but to give them notice that the privilege could not be extended beyond the year, and that they must not return the next year.* Mr. Adams, supposed Lord Bathurst more anxious to prevent the Americans from curing their fish on the British territory, than from taking them in the British waters, and accounts for his anxiety on the supposition that the ministry knew "that the immediate curing and drying of the fish, as soon as they were taken, was essential to the value, if not to the very prosecution of the fishery." Lord Bathurst, however, alleged the ground of his anxiety, to be the frequent disturbances between the fishermen of the two nations.

A few days after this conversation, between Lord Bathurst and Mr. Adams, the latter sent his contemplated letter to the former. He however brings forward no new arguments. He again takes his old ground, urges the indefeasible right of the Americans to this privilege, because they had always enjoyed it, because the character of the Treaty of 1783, gave it such a quality of perpetuity, that it could not be dissolved or abrogated by war; and that the right to fish rested on the same basis as the national independence; and therefore the omission of a Treaty stipulation, to continue that right, could not affect the question, notwithstanding the notice: and that Great Britain, by her nominal grant in the treaty of 1783, only acknowledged a pre-existing right, &c.

He then, on the part of the fishermen, appeals to the humanity, cupidity and interest of Great Britain, by representing that the labours of the fishermen "had the

ultimate result of pouring into her cup a great portion of their hardy and laborious industry, that these fisheries afforded the means of subsistence to a numerous class of people in the United States, whose habits of life had been fashioned to no other occupation, and whose fortunes had allotted them no other possession. *That to another, and, perhaps equally numerous class of our citizens, they afforded the means of remittance and payment for the productions of British industry and ingenuity, imported from the manufactures of the United Kingdom.* He then urged the usefulness of the labours of the fishermen, and the custom which spared them in times of hostility. That although the interest of the American and British fishermen might at times conflict, yet the labour of the first, "*might produce advantages to other British interests, equally entitled to the regard, and fostering care of their sovereign.*

On the 8th of November, Mr. Adams transmitted to Mr. M nroe, Lord Bathurst's reply, dated October 30.

The British minister, after protesting against the claim, observes in behalf of the ministry, "that they feel every disposition, to afford the citizens of the United States, all the liberties and privileges, connected with the fisheries, which can consist with the just rights and interests of Great Britain, and secure his majesty's subjects from the undue molestations in their fishery, which they have formerly experienced from the citizens of the United States." He then forcibly controverts the doctrine of the eternal duration of the right, in the Americans, to enjoy the fishing privileges, within the limits of the British sovereignty. "If (says he) the United States derived from the Treaty, of 1783, privileges from which other independent nations, not admitted by treaty, were excluded, the duration of the privileges must depend upon the duration of the instrument, by which they were granted, and if the war abrogated the treaty, it determined the privileges. It has been urged indeed on the part of the United States, that the treaty of 1783, was of a peculiar character, and

that because it contained a recognition of American independence, it could not be abrogated by a subsequent war between the parties. To a position of this novel nature, Great Britain cannot accede. *She knows of no exception to the rule, that all treaties are put an end to, by a subsequent war between the same parties;* she cannot, therefore, consent to give her diplomatic relations with one state, a different degree of permanency, from that on which her connection with all other states depends. Nor can she consider any one state at liberty, to assign to a treaty made with her, such a peculiarity of character, as shall make it, as to duration, an exception to all other treaties, in order to found, on a peculiarity thus assumed, an irrevocable title to all indulgencies, which have all the features of temporary concessions."

He then asks what necessary connection there could be, between a right to independence, and a liberty to fish. "Liberties within British limits, are as capable of being exercised by a dependent, as by an independent state, and cannot therefore be the necessary consequence of independence." That the right of America to independence, could not be affected, by considering the treaty of 1783, as abrogated by the war, the right was not granted by the treaty, but only acknowledged; were it not so, Great Britain had renewed her acknowledgment of independence, by her declaration of war, in 1812.

After controverting the doctrine of Mr. Adams, that the right existed previous to the treaty of 1783, he says, "that though Great Britain could never admit the claim of the United States to enjoy those liberties, with respect to the fisheries, as matter of right, *she was by no means insensible to some of the considerations in the letter of the American minister.* And although he could not consider the American claim analogous to the indulgence granted to enemies' subjects, to fish on the high seas, for the purpose of conveying fresh fish to market: Yet, says he, (speaking of the British nation) "They do feel that the enjoyment of the liberties, for-

merly used by the inhabitants of the United States, may be very conducive to their national and individual prosperity, though they should be placed under some modification; *and this feeling operated most forcibly in favour of concession.*

He then complains of the pre-occupation of the British waters, by the American fishermen, and the introduction of prohibited goods into the British territories, from American vessels, to the injury of the revenue, and concludes by professing that the British government, were willing to enter into negotiations for the *modified* renewal of the liberties.

"On the 8th of November, Mr. Adams informs his government of this offer to negotiate, and by a despatch from Secretary Monroe, dated February 27, 1816, he is authorized to commence the negotiation.

Mr. Monroe, in a letter to Mr. Adams, dated May 24, 1816, expresses a hope that the negotiation respecting the fisheries, might have been concluded.

From another letter, dated on the 8th of July following, it appears, that Mr. Bagot was authorized to conclude the negotiation at Washington.

An order had been issued, by the British government to Admiral Griffith, commanding on the American station, to remove the American fishing vessels from the British waters, which order however was revoked, during the pendency of the negotiation, upon the application of Mr. Bagot.

Mr. Bagot and Mr. Monroe proceeded in the negotiation. Mr. Bagot disclaimed in the most absolute and positive terms all claim which was founded on any supposed right on the part of America, and represented his offer as arising solely from a feeling both friendly and humane on the part of the British nation. He offered the continuance of the right to fish on that part of the coast of Labrador which commences at Mount Joli to the Bay of Esquimeaux, and to be confined to the unsettled parts of that coast in the curing and drying of their fish. That offer was rejected by the American government. Mr. Bagot then offered that part of the

southern coast of Newfoundland which extends from Cape Ray eastward to the Ramean Islands.

On the 30th of December, 1816, Mr. Monroe informed Mr. Bagot, that his last offer was rejected, and says, "I have made every inquiry that circumstances have permitted respecting both these coasts, and find that neither would afford to the citizens of the United States, the essential accommodation which is desired—*neither having been much frequented by them heretofore, or likely to be in future.*"

On the next day, Mr. Bagot after representing the anxious desire of the Prince Regent to accommodate the Americans, offers both portions of coast.

Mr. Monroe informed him on the 7th January, (1817) that his last offer was also rejected, and says, that those coasts, when taken conjointly, would not afford the accommodation so important to the fishermen, and repeated that *neither had been much frequented by American fishermen or were likely to be.*

In a letter dated February 5th, 1817, Mr. Monroe informs Mr. Adams, of the failure of the last attempt to negotiate, and requests him to obtain an order "to the naval officer commanding on that station not to interrupt or disturb our fishermen during the approaching season," and stating it also to be the intention of the President to renew the negotiation.

On the 21st of April, Mr. Adams made the application in pursuance of the request of Mr. Monroe. On the 7th of May, Lord Castlereagh replied, that as soon as the last offer of Mr. Bagot was rejected, the British Admiral commanding at Halifax was notified, that the orders, which were suspended by Mr. Bagot, were renewed; he then says, "*the British government cannot but feel some reluctance again to suspend them, without being in possession of more precise grounds for expecting an adjustment;* but the Prince Regent in the hope of an amicable settlement, was induced to yield to the application," and to suspend the execution of the orders during the approaching season.

On the 4th of August, 1817, Mr. Rush (who had assumed the Department of State upon the accession of Mr. Monroe to the Presidency,) addressed a letter to Mr. Bagot, stating, that at the commencement of the fishing season, twenty sail of fishing vessels on their outward voyage were compelled by a storm to put into a harbour, on the British coast, *that while there, they were boarded by an officer of the customs, who demanded and received light money from them*:—that after completing their fares of fish, they commenced their return to the United States:—that they were compelled by another storm to take shelter in another British port:—*that in this port they were captured by a barge from the British sloop of war Dee, Capt. Chambers, and ordered for Halifax where they arrived on the 9th of June. That the unfortunate crews had been exposed to peculiar inconveniences and hardships; and that those who desired to return to their homes were refused passports.* Mr. Rush denied that these vessels had been fishing in British waters.

Mr. Bagot enclosed to Mr. Rush a copy of the orders of Admiral Sir David Milne, commanding on the North American station, to the captain of the Dee, directing him to capture all vessels fishing, or at anchor within the maritime jurisdiction of Great Britain, and to send them to Halifax for adjudication, exempting, however, vessels which should clearly appear to have been obliged to put into British ports in consequence of distress.

The captain of the Dee, in his despatch to the Admiral, dated the 8th of June, states that he was informed that the whole of the banks westward (off Cape Sable and Shelburne) were fished by American schooners, and that they continually resorted to the creeks on the coast, to catch their bait, clean their fish, and to procure wood, water, &c. which was highly detrimental to the industrious fishermen living on the coast, &c. That he received information that nine American vessels had been found at Ragged Island harbour laying with their nets set. Lieut. Hooper remained there and despatched Lieut. Lechenere, to Cape Negro, where he found two vessels

in the harbour, and seven others came in, the whole joined him with two others which came into Ragged Island, and that he had sent them into Halifax for adjudication. He said, that had they been in distress they might have been relieved with more ease at the regular harbour of Shelburne, than at the two intricate harbours in its neighbourhood. He further says, "*that, without the use of our harbours, it appears impossible for any foreigners to carry on successful fishing on this coast.*"

In the year 1818, Mr. Gallatin and Mr. Rush were empowered to negotiate a new commercial treaty with Great Britain, and Mr. Adams specially instructed them respecting the fisheries. In his despatch of July 28, 1818, he says, "*The President authorizes you to agree to an article, whereby the United States will desist from the liberty of fishing, and curing, and drying fish within the British jurisdiction generally, upon condition that it shall be secured as a permanent right, not liable to be impaired by any future war, from Cape Ray to the Ramean Islands, and from Mount Joli on the Labrador coast, through the strait of Belle Isle, indefinitely north, along the coast: the right to extend as well to the curing and drying the fish, as to fishing.*"

Mr. Adams then adverts to the trial of the above-named American vessels at Halifax, in whose favour a decree had been obtained from the Vice Admiralty Court, on the ground that there was no act of Parliament which authorized the condemnation of vessels for a violation of territorial jurisdiction, but on the question of the right of the Americans to fish under the treaty of 1783. Judge Wallace who presided was clearly of the opinion, that the war dissolved that treaty. The captors appealed from the decree to London, and Mr. Adams, instructed Mr. Rush to obtain the best counsel to argue the *question of right* before the Lords of appeals, *asserting that the rights in question were not acquired by the treaty of* 1783, *but having been always enjoyed before, were only recognised by that treaty.* He concluded this branch of his instructions by saying,

" The British government may be well assured that not a particle of these rights will be *finally* yielded by the United States, *without a struggle, which will cost Great Britain more than the worth of the prize.*

It is needless to recount the various propositions respecting the fisheries which were offered by the different parties, at the negotiation which terminated in the Convention of October, 1818. The result was, the insertion of this article in the convention which is the first.

" Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof, to take, dry, and cure fish on certain coasts, bays, harbours and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties, that the inhabitants of the said United States shall have, forever in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland from the said Cape Ray to the Quipon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks from Mount Joli, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly, indefinitely, along the coast; without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company: and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors, of the ground. *And the United States hereby renounce, forever, any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure*

fish, on or within three marine miles of any of the coasts, bays, creeks, or harbours of his Britannic Majesty's dominions in America, not included in the above-mentioned limits: Provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and of repairing damage therein, of purchasing wood, and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing, fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

At the close of the despatch in which Mr. Rush communicates the news of the signing of the convention to Mr. Adams, he says, "*From the instructions of the 28th of July, I infer that government contemplated becoming instrumental to the solemn argument of the great question of right, under the treaty of '83 only* in the event of no article respecting the fisheries being agreed upon; and then states his supposition that the signing of the treaty precluded the necessity of this course—he further says, "I mention this, perceiving from the newspapers, *that there have been fresh captures of our fishing vessels during the last season, followed by sentences of condemnation,* from which appeals, on the part of the claimants, may, I take it for granted be anticipated."

Such was "the most lame and impotent conclusion" of the celebrated negotiation respecting the fisheries. This subject may be viewed in a variety of lights.

Admit the doctrines assumed by Mr. Adams, to have been correct, and his argument on the question of right to have been incontrovertible, was it wise to leave a question of such vital importance as he chose to consider this, unsettled?

When the British government had explicitly avowed their sentiments in a formal communication, when he had a full knowledge of their views, was it wise in him to sign a treaty of peace, leaving this most important national interest insecure, and a right as sacred as the

right to independence, subject to violation on the day of its ratification?

Could any reasonable man have believed that after this formal avowal by the British government of their intentions, and after their solemn denial of our right, they would leave such of our fishermen as they should discover in their waters unmolested?

Was it not morally certain that the British nation would act practically upon this determination of their government, and would (should it become necessary) resort to force to exclude the Americans from their territorial jurisdiction?

But says Mr. Adams, if the Americans were notified by the British that they should not again grant this privilege to them, the British were also notified by the Americans, that they considered that privilege secured by a title which could not be abrogated by war.

Of what practical consequence was the American notice? America claimed a right to use a beneficial privilege within the territorial jurisdiction of Great Britain, the existence of which, Great Britain denied. Force must settle all controverted questions which cannot be settled by negotiation. Had an appeal been made to arms, who had the advantage. The British were upon their own shores, and within their own waters. We should have been compelled to have sought the lion in his den. Had we armed our fishermen we should only have given an additional value to the prizes of the British ships of war. The question must eventually have been settled by a resort to open hostilities, and under this peculiar advantage on the part of Great Britain. She could have chosen her time, and might and probably would have chosen it, when our army was disbanded, our navy dismantled, our whole commerce afloat, and when all the dear bought advantages of the last war, experience, organization, discipline, and the confidence arising from successful enterprise might have been lost.

The great object of treaties of peace is security. Truces or armistices may be made for convenience,

sometimes in the hope of peace, but treaties of peace settling no controverted principle, or disputed right, are worse in their consequences than a state of continued hostility. Nations who expect war are inexcusable if they are not prepared to meet them, and a state of continual preparation would produce all the disadvantages of war and preclude the possible advantages of annoying the enemy, by capturing his ships and conquering his colonies. Pressed as Great Britain once was with a war with the whole continent of Europe for years, and staggering under burthens which would have sunk the Roman Empire, (burthens so great that the most sagacious statesmen of Europe predicted her inability to maintain the contest for a single year;) yet she steadily refused to make a peace, unless she could satisfy herself that the peace which she should make, would be secure and permanent.

The Treaty of Ghent was ratified by the American Government in the latter part of February, 1815, and the exchange of ratifications took place some time after. On the 21st of the following July, Mr. Monroe was apprehensive that hostilities would be renewed, and informed Mr. Adams of his apprehensions, and this opinion was founded on previous acts committed by the British; although the British government disavowed the act of the Captain of the Jaseur, yet she maintained a principle which both Mr. Monroe and Mr. Adams considered as indicative of a spirit equally hostile.

Mr. Adams in his despatch to Mr. Monroe of the 19th of September following, expresses his own apprehensions that Great Britain was determined to renew hostilities.

Orders were issued to the British naval commanders in the first instance, to warn off, and then, to capture our fishing vessels: these orders, it is true were occasionally suspended, but they were occasionally enforced, and many American vessels were captured which were only saved from condemnation in the Vice-Admiralty Court because there was no specific act of Parliament providing for such condemnation, and upon the last sup-

plicating application to the British government for a further suspension of these orders, there was an evident reluctance to yield this indulgence.

Had not the American government abandoned the ground which Mr. Adams assumed, a new war would inevitably have occurred, and nothing would have been gained by the Treaty of Ghent but a respite, during which. our ability to maintain a war would have been lessened, and the spirit of the people which was flowing brightly from the excitement of our successes on the ocean, and the mighty victory at New Orleans would have slumbered in indifference. The cause of war would have been narrowed to a single point. The right for which we contended would have been considered as the exclusive interest of Massachusetts, and to say the most of it, of a questionable character.

A statesman, a suckling statesman could not have committed a greater mistake than to pledge the national honour on the question of the fishing right, and then to sign a Treaty with a full understanding that the right would not be admitted, he having the germs of war in the very instrument of pacification, and on a point about which it would have been impossible to make the people believe that the general interest was involved.

If this right stood as unshaken as it did before the last war, "*constituting a vital part of our political existence,* and *resting on the same solid foundation as our Independence itself,*" was it worthy of the dignity of the American nation to beg for it, or to carry it into the market for the purposes of traffic, by holding out considerations of interest as the *bonus* for which it was to be regranted. If the right was of this lofty character it was enough. A right of this character rested on its own basis and required no props to sustain it. If the alternative was its surrender, or war, not an American could hesitate in his choice, if he viewed the subject in the same light with Mr. Adams: under such circumstances it was a national degradation to appeal to British humanity for the permission to use an unquestionable right "by representing it as affording the means of subsistence to multitudes, who without it would be destitute."

Still more humiliating was it to appeal to British cupidity by representing that on the exercise of this right the Americans depended for the means "*to make their remittances to pay for the manufactured goods of Great Britain*," and to hint that it would be to the advantage of a great British interest that no *unnecessary stimulus should be given to the growth of American manufactures*, thus holding out to the British nation a virtual pledge that the American government would aid in no protecting system for the benefit of domestic manufactures provided the Fisheries were regranted!

In what a wretched situation is that negotiator placed who after assuming the loftiest pretensions about an unquestionable right, will condescend to traffic for that right by holding out inducements for its purchase; we have often been called a trading nation, and surely with justice, if an American minister will undertake to trade away our independence! and to lay the nation under a perpetual bond to purchase British broadcloths, and calicoes, and laces, and linens.

Mr. Adams had the further mortification to hear from a British minister that he was not insensible to some of the considerations which had been offered, and that although there was not the slightest foundation for the American claim on the ground of right, yet that the ministry felt that the enjoyment of "the liberties formerly used by the inhabitants of the United States might be very conducive to their national and individual prosperity though they should be placed under some modifications; and that the feeling operated most forcibly in favour of concession." He had the mortification to hear that this important interest, which was lost to the American people from his stubborn adherence to a false principle, might be regained, because a British ministry felt for the distresses of American fishermen! And from motives of humanity alone (the British say) they regranted to us by the Convention of October, 1818, a fragment of that magnificent privilege, which we had so long enjoyed, and to the unrestricted use of which, we might unquestionably attribute a large share of our national wealth.

If the privilege was of the character which Mr. Adams assumed it to be, what right had the American government to give up a part, or even the slightest part. The right existed entire, or it did not exist:—if it existed entire, its surrender is a wrong done to the nation for which the government are answerable, inasmuch as they renounced the right to more than three quarters of this privilege, if the estimate be made upon length of coast, and a greater proportion if its value be estimated from the facility in taking, curing and drying the fish, and the safety of navigating.

On questions of national law and the construction of Treaties, I do not profess to have as much learning as even Col. Pickering, Gen. Washington's Secretary of State, who President Adams tells us was not qualified for a higher station than that of a collector of the customs, but I have reflected somewhat upon the argument of Mr. John Quincy Adams as to the permanency of the American right of fishery. If I have penetration enough to understand his argument he founds the right,

First, on the perpetual possession.

Secondly, on the Treaty of 1783, which treaty he contends was not abrogated by the last war.

A general has sometimes been defeated from spreading his force over too much ground, sometimes, when he might successfully have defended one position by undertaking to defend more, and sometimes by an injudicious choice of positions.

If perpetual possession gave us the right, it was not derived from the Treaty of 1783, the title would have been good without the Treaty.

If the title was derived from the treaty of 1783 then there was either no prior title, or if there was, it must have been merged in the title acquired from the Treaty.

It is to be understood that none of the reasoning in this discussion is applicable to the right of fishing on the high seas, that right is common to all independent nations, unless restricted by treaty stipulations; that right Great Britain never denied to be ours; but it is to be applied to the right of using the fishery within the terri-

torial domain of Great Britain, (which domain all civilians define to be an absolute right of soil, and of water within a marine league from the shore.)

If our title be derived from possession when did that possession commence? Did it commence on the day of the settlement of Jamestown, or Plymouth; of the capture of Louisbourgh; of the surrender of the French provinces in North America; of the signing of the Treaty of Peace of 1763; of the battle of Lexington; of the disclaimer made by the Provincial Congress of Massachusetts of the authority of Gov. Gage; or on the day in which the Declaration of Independence was signed?

I believe there are none in America who will say that this nation was independent of the British crown before the 4th day of July, 1776, except it be Mr. John Quincy Adams and his venerable father; if the arguments and the opinions of the son are to be believed, America never was subject to the British crown, and the father says that he declared America to be independent twenty-one years previous to the signing of the immortal declaration. What kind of independence was meant I am unable to say. It is certain that in all the provinces except Rhode Island and Connecticut, Pennsylvania and Maryland, the Governors held their appointments from the crown, and subject to the pleasure of the king, and all the provincial officers received their appointments from the Governors. Rhode Island and Connecticut claimed no inherent civil rights but derived them from the charters of Charles II. The modern doctrine of the rights of man, so zealously attacked by the younger Adams, was not then understood. In the proprietary governments the proprietors held by grant from the crown, and subject to the crown.

If my recollection serves me, the elder Adams called himself a true and loyal subject of the king of Great Britain in the autumn of 1774, and all the other members of the first Congress. The Americans who resisted the king's troops at Lexington never dreamed that they were not subjects of the king, the Provincial Congress never disclaimed the king but only the king's Governor,

and to the time of the declaration of independence professed to resist not the king of Great Britain, but the unconstitutional acts of the Parliament of Great Britain. To that day the right of fishing was a right enjoyed by us in common with all the subjects of the British crown. It was a right not derived from our independence of the crown, but from our dependence on it. Our right then from possession must have accrued between the 4th day of July, 1776, and the Treaty of Peace in Nov. 1783.

Will any man pretend that during that period we ever had the shadow of possession? I do not hazard much in saying that no fishermen of the States dropped their lines in British waters or cured their fish on British soil subsequent to the 4th of July, 1776, and anterior to Nov. 1783. If any did, it was in them an act of singular temerity, inasmuch as the British navy covered the seas of North America, and not only the British provinces as they now exist were in the possession of the crown, but all that part of the state of Maine between Nova Scotia and the Penobscot, with all its bays, harbours, inlets and rivers. During the continuance of hostilities, capture would not only have been probable, but almost certain. If fish were taken upon the British American coasts during that period they must have been taken secretly and by stealth, and not in such a manner as to give us a presumptive title from possession.

If the title be placed on the same ground with our title to independence, how is the treaty of 1783 to be construed? The British may say that they by that treaty, granted us independence; all that we pretend to say is, that they then acknowledged our independence to exist, or at the most we contend that the acknowledgment was retrospective, and no man in his senses except the two gentlemen I have before named will say that the acknowledgment extended to a time anterior to the 4th of July, 1776. It would be strange indeed if it acknowledged independence to have existed previous to that day, when, the very men who declared it had called themselves, in an official act not a year anterior to the declaration, true and loyal subjects of the crown of Great Britain!

Had the treaty of 1783 been silent on the subject of the fisheries no right would have remained to America, but after an infinite deal of negotiation a right was obtained —full, ample and satisfactory, giving to us a privilege almost equal to that of British subjects, and until the war of 1812 we held that privilege by a title as incontestable as our title to the capitol, yet the capitol was taken, and it was amongst the chances of possibilities that we might have been compelled to negotiate for it.

The strong point on which Mr. Adams seems to rest his argument is the indestructable nature of the Treaty of 1783. I have ever supposed that a declaration of war annihilated all subsisting treaties between belligerents. That any rights appertaining to the independence of nations are abrogated by war I do not contend, but all rights derived from a Treaty are, and it is very easy to suppose that a privilege beneficial to one nation existing within the territorial domain of another may be. The right to independence rests upon a different principle, and if it did not, the act of declaring war, or the consent to negotiate, is a sufficient acknowledgment that it exists. And it would exist without a treaty. Individuals may be outlawed, but nations cannot be, their independence will remain until they are conquered, and even then without a formal surrender by treaty; after that, hostile resistance would be rebellion, before it, it would be legitimate and justifiable warfare :—and were nations thus resisting even after every fortified post in the conquered country had been obtained, to violate the rules of legitimate warfare, they would violate the laws of nations, and all other nations would be justified in making common cause for the purpose of preventing such violations.

But if this privilege was unaffected by a declaration of war, and remained in its full force and pristine strength, then the subjects of one belligerent, might of right remain in the heart of the territory of the other belligerent, and carry on their ordinary business without hindrance or molestation. The vessels of one might be captured on their own waters, and in their own har-

bours, and the vessels of the other might be privileged from capture themselves, and for aught I see, might aid in the capture of those of the other power, because the grant was not mutual, but only existed on one side.

The treaty remained unimpaired by the declaration of war, or it did not; if it was unimpaired, then every hostile act was wrong and illegal, if it was impaired, then the doctrine of Mr. Adams, as to its indestructibility falls to the ground.

Mr. Adams may choose to call this the British side of the argument, but the period has arrived when he cannot play off his catch words of British influence, British partialities, British arguments. It needs not a British argument to shew that on the suggestion of Mr. Adams, an important and invaluable national interest was exposed to total loss from his misconstruction of a plain principle, a principle founded on common reason, and common sense, and which none but a man perversely obstinate, and wilfully wrong headed and eccentric would undertake to deny.

It is in vain to call in the sanction of the other negotiators. If Mr. Adams will claim the whole merit of his wonderful discovery of a new principle, if that principle be found upon investigation to be absurd and false, resting on no equitable basis, and unsupported by any custom or usage of nations, he ought to be sufficiently magnanimous to take the blame of his erring and eccentric diplomacy.

Besides the interest being exclusively a Massachusetts interest, they might reasonably suppose that a diplomatist as able and experienced as he was expected to have been, would not have hazarded this great interest of his own state, unless he had examined the strength, and tested the truth of the principle on which he meant to place it. They confided too much, and that was their error. It may seem surprising that they should have been so deluded, yet it is not more surprising than that the people of New England, intelligent, shrewd and sagacious as they certainly are, especially, in all matters touching their own interests, should still continue to be-

lieve that it was owing to the exertions of Mr. Adams, that the fisheries were saved! that the man who was mainly instrumental in the destruction of their commerce, and who holds the mercantile character in utter contempt, should be its champion? that the man who is under a virtual pledge to the government of Great Britain, to lend no aid to any system for the protection of domestic industry, should be the fast friend of the manufacturing interest? yet such is the common belief of New England, a delusion as strange as that, which is said to have prevailed at Salem during an early period of the colonial history of

MASSACHUSETTS.

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